

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
Plaintiff,)	
)	
v.)	NO. 1:06-cv-1686-LJM-WTL
)	
DANIEL R. RAPIER and NAOMI LYNN RAPIER,)	
Defendants/Cross-Claimants,)	
)	
and)	
)	
FRANKLIN COUNTY, INDIANA,)	
Defendant/Cross-Claim Defendant.)	
)	
DANIEL R. RAPIER and NAOMI LYNN RAPIER,)	
Third-Party Plaintiffs/)	
Counter-Claim Defendants,)	
)	
v.)	
)	
GALE HORNSBY and JUANITA HORNSBY,)	
Third-Party Defendants/Counter-Claimants.)	
)	
GALE HORNSBY and JUANITA HORNSBY,)	
Cross-Claimants,)	
)	
v.)	
)	
FRANKLIN COUNTY, INDIANA,)	
Cross-Claim Defendants.)	
)	

CONSENT DECREE

TABLE OF CONTENTS

I.	<u>BACKGROUND</u>	2
II.	<u>JURISDICTION</u>	3
III.	<u>PARTIES BOUND</u>	3
IV.	<u>DEFINITIONS</u>	3
V.	<u>STATEMENT OF PURPOSE</u>	5
VI.	<u>PAYMENT OF RESPONSE COSTS</u>	5
VII.	<u>FAILURE TO COMPLY WITH CONSENT DECREE</u>	6
VIII.	<u>COVENANT NOT TO SUE BY UNITED STATES</u>	8
IX.	<u>RESERVATION OF RIGHTS BY UNITED STATES</u>	8
X.	<u>COVENANT NOT TO SUE BY SETTLING DEFENDANTS</u>	9
XI.	<u>EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION</u>	9
XII.	<u>ACCESS AND INSTITUTIONAL CONTROLS</u>	10
XIII.	<u>ACCESS TO INFORMATION</u>	12
XIV.	<u>RETENTION OF RECORDS</u>	13
XV.	<u>NOTICES AND SUBMISSIONS</u>	14
XVI.	<u>RETENTION OF JURISDICTION</u>	15
XVII.	<u>INTEGRATION/APPENDICES</u>	15
XVIII.	<u>LODGING AND OPPORTUNITY FOR PUBLIC COMMENT</u>	15
XIX.	<u>SIGNATORIES/SERVICE</u>	16
XX.	<u>FINAL JUDGMENT</u>	16

I. BACKGROUND

A. On November 21, 2006, the United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended (“CERCLA”) against Franklin County, Indiana (“Franklin County”) and Daniel and Naomi Rapier (the “Rapiers”), seeking reimbursement of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Laurel Stone Church Road Superfund Site in Laurel, Franklin County, Indiana (the “Site”).

B. On January 19, 2007, the Rapiers filed a cross-claim against Franklin County for CERCLA cost recovery and CERCLA contribution, and a third party claim against Gale and Juanita Hornsby (the “Hornsbys”) for CERCLA cost recovery, CERCLA contribution, negligence, and environmental legal action pursuant to Indiana Code § 13-30-09.

C. On April 13, 2007, the Hornsbys filed a counter-claim against the Rapiers for CERCLA contribution. On August 15, 2007, the Hornsbys filed a cross-claim against Franklin County for defense and indemnity.

D. By entering into this Consent Decree, the Rapiers, Franklin County, and the Hornsbys (“Settling Defendants”) do not admit any liability arising out of the transactions or occurrences alleged in the complaint, counter-claims, and cross-claims.

E. The United States has reviewed certain Financial Information (as defined below) submitted by Franklin County and the Hornsbys (“Settling Ability to Pay Defendants” or “Settling ATP Defendants” to determine whether Settling ATP Defendants are financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, the United States has determined that Settling ATP Defendants are able to pay the amounts specified in Section VI.

F. The United States has no present intention of pursuing additional litigation against any individuals or entities not a party to this Decree, including but not limited to Donna Koohns, for recovery of the Past Response Costs at the Site.

G. Based on information within its possession as of the date of entry of this Consent Decree, the United States does not presently anticipate additional investigation, removal, and/or remedial activities at the Site.

H. The United States and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED,

AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants. Settling Defendants consent to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States and upon Settling Defendants, and their heirs, successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

b. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

g. "Financial Information" shall mean those financial documents identified in Appendix B.1 for Franklin County, and Appendix B.2 for Gale and Juanita Hornsby.

- h. “Franklin County” shall mean Defendant and Cross-claim Defendant Franklin County, Indiana.
- i. The “Hornsby” shall mean Third-Party Defendants and Cross-Claimants Gale Hornsby and Juanita Hornsby.
- j. “Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.
- k. “Owner Settling Defendants” shall mean Daniel Rapier and Naomi Rapier.
- m. “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.
- n. “Past Response Costs” shall mean all costs, including but not limited to direct and indirect costs, that EPA or DOJ on behalf of EPA has incurred and/or paid at or in connection with the Site through the date of entry of this Consent Decree, plus accrued Interest on all such costs through such date.
- o. “Parties” shall mean the United States and Settling Defendants.
- p. “Plaintiff” shall mean the United States.
- q. The “Rapiers” shall mean Defendants, Cross-claimants, and Third Party Plaintiffs Daniel Rapier and Naomi Rapier.
- r. “RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. § 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).
- s. “Section” shall mean a portion of this Consent Decree identified by a Roman numeral.
- t. “Settling ATP Defendants” shall mean Franklin County, Indiana; Gale Hornsby; and Juanita Hornsby.
- u. “Settling Defendants” shall mean Franklin County, Indiana; Gale Hornsby; Juanita Hornsby; Daniel Rapier; and Naomi Rapier.
- v. “Site” shall mean the Laurel Stone Church Road Superfund site, located at 19105 Stone Church Road in Laurel, Franklin County, Indiana and generally shown on the map included in Appendix A.

w. “United States” shall mean the United States of America, including its departments, agencies and instrumentalities.

V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the mutual objective of the Parties is for Settling Defendants to make certain cash payments to address the alleged liability of Settling Defendants for the Site as provided in the Covenant Not to Sue by the United States in Section VIII and subject to the Reservations of Rights by United States in Section IX.

VI. PAYMENT OF RESPONSE COSTS

5. Payments by Settling Defendants.

a. Franklin County, on behalf of itself and the Hornsby's, shall pay to the EPA Hazardous Substance Superfund the principal sum of \$350,000, plus an additional sum for Interest as explained below:

(i) Payment shall be made in 4 installments. Each installment, except for the first, on which no interest shall be due, shall include the principal amount due plus an additional sum for accrued Interest on the declining principal balance calculated from the date of the first payment.

(ii) The first payment of \$100,000 shall be due within 30 days of entry of this Consent Decree.

(iii) Subsequent payment of \$84,000 shall be due 120 days after entry of the Consent Decree, payment of \$84,000 shall be due 240 days after entry of the Consent Decree, and payment of \$82,000 shall be due 360 days after entry of the Consent Decree. Franklin County may accelerate these payments, and Interest due on the accelerated payments shall be reduced accordingly.

b. The Rapiers shall pay to the EPA Hazardous Substance Superfund, the principal sum of \$45,000, plus an additional sum for Interest as explained below.

(i) Payment shall be made in 2 installments. No interest shall be due on the first installment. The second installment shall include the principal amount due plus an additional sum for accrued Interest on the declining principal balance calculated from the date of the first payment.

(ii) The first payment of \$25,000 shall be due within 30 days of entry of this Consent Decree.

(iii) Subsequent payment of \$20,000 shall be due 300 days after entry of

the Consent Decree. The Rapiers may accelerate this payment, and Interest due on the accelerated payment shall be reduced accordingly.

6. Payments to the United States shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account in accordance with current EFT procedures, referencing the EPA Region and Site Spill ID Number INN000508308, and DOJ Case Number 90-11-3-08896. Payments shall be made in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney’s Office in the Southern District of Indiana following lodging of the Consent Decree. Any payment received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day.

7. At the time of each payment, Franklin County and the Rapiers shall send notice that payment has been made to EPA and DOJ in accordance with Section XV (Notices and Submissions). Such notice shall reference the EPA Region and Site Spill ID Number INN000508308 and DOJ Case Number 90-11-3-08896. In addition, Franklin County shall send notice to:

Financial Management Officer
U.S. Environmental Protection Agency
Mail Code MF-10J
77 West Jackson Blvd.
Chicago, IL 60604

8. The total amount of each payment to be paid pursuant to Paragraph 5 shall be deposited in the EPA Hazardous Substance Superfund. The total amount of each payment to be paid pursuant to Paragraph 5 shall go toward the reimbursement of the United States’ Past Response Costs.

VII. FAILURE TO COMPLY WITH CONSENT DECREE

9. Late Payments. If Franklin County or the Rapiers fail to make any payment under Paragraph 5 by the required due date, all remaining installment payments and all accrued Interest shall become due immediately for the party failing to make timely payment. Interest shall continue to accrue on any unpaid amounts until the total amount due has been received.

10. Stipulated Penalty.

a. If any amounts due under Paragraph 5 are not paid by either Franklin County or the Rapiers by the required date, the party failing to make timely payment shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the principal and Interest required by Paragraph 9, \$500 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as “stipulated penalties” and shall be made by certified or cashier’s check made payable to “EPA Hazardous Substance Superfund.” The check, or a letter accompanying the check, shall

reference the name and address of the party making payment, the Site name, the EPA Region and Site Spill ID Number INN000508308, and DOJ Case Number 90-11-3-08896, and shall be sent to:

U.S. Environmental Protection Agency, Region 5
P.O. Box 371531
Pittsburgh, PA 15251-7531

c. At the time of each payment, Franklin County and the Rapiers shall send notice that payment has been made to EPA and DOJ in accordance with Section XV (Notices and Submissions) and to:

Financial Management Officer
U.S. Environmental Protection Agency, Region 5
Mail Code MF-10J
77 W. Jackson Blvd.
Chicago, IL 60604

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Franklin County or the Rapiers of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

11. If the United States brings an action to enforce this Consent Decree and is the prevailing party in such an action, the violating party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

12. Payments made under this Section shall be in addition to any other remedies or sanctions available to the United States by virtue of either Franklin County's or the Rapiers' failure to comply with the requirements of this Consent Decree.

13. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Franklin County or the Rapiers from payment as required by Section VI or from performance of any other requirements of this Consent Decree.

VIII. COVENANT NOT TO SUE BY THE UNITED STATES

14. Except as specifically provided in Section IX (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) with regard to the Past Response Costs. This covenant shall take effect upon receipt by EPA of the amounts required by Section VI, Paragraph 5 (Payment of Response Costs), and any amount due under Section VII (Failure to Comply with Consent Decree). With respect to the Settling ATP Defendants, this covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by the Settling ATP Defendants. If the Financial Information is subsequently determined by EPA to be false or, in any material respect, inaccurate, Settling ATP Defendants shall forfeit all payments made pursuant to this Consent Decree and this covenant not to sue and the contribution protection in Paragraph 21 shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from Settling ATP Defendants' false or materially inaccurate information. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

IX. RESERVATION OF RIGHTS BY UNITED STATES

15. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the Covenant Not to Sue by United States in Paragraph 14. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

- a. liability for failure of Settling Defendants to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 6906; and
- e. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs.

16. Notwithstanding any other provision of this Consent Decree, EPA reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree against the Settling ATP Defendants, if the Financial Information provided by Settling ATP Defendants, or the financial certification made by Settling ATP Defendants in Paragraph 33, is false or, in any material respect, inaccurate.

X. COVENANT NOT TO SUE BY SETTLING DEFENDANTS

17. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States or its contractors or employees, with respect to Past Response Costs or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site for which Past Response Costs were incurred, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

18. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

19. Settling Defendants agree not to assert any claims or causes of action that it/he/she may have for all matters relating to contamination at the Site, including for contribution, against any other person, with the exception of the currently existing agreement between the Rapiers and Donna Koohns. In addition, Settling Defendants agree to dismiss any and all claims or causes of action related to the Site that have been asserted in the above captioned-litigation. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Defendants may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Defendants.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

20. Except as provided in Paragraph 19, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Except as provided in Paragraph 19, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party to this Consent Decree.

21. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants are entitled, as of the date of entry of this Consent Decree, to protection from

contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are the Past Response Costs. The “matters addressed” in this Consent Decree do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against Settling Defendants coming within the scope of such reservations.

22. Settling Defendants agree that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon it. In addition, Settling Defendants shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

23. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by the United States set forth in Section VIII.

XII. ACCESS AND INSTITUTIONAL CONTROLS

24. If the Site, or any other property where access and/or land/water use restrictions are needed to implement response activities at the Site, is owned or controlled by the Owner Settling Defendants, such Owner Settling Defendants shall:

a. Commencing on the date of lodging of this Consent Decree, provide the United States and its representatives, including EPA and its contractors, and the State of Indiana and its representatives, including the Indiana Department of Environmental Management and its contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any response activity related to the Site, including, but not limited to, the following activities:

- (i) Monitoring, investigation, removal, remedial or other activities at the Site;
- (ii) Verifying any data or information submitted to the United States or the State of Indiana;
- (iii) Conducting investigations relating to contamination at or near the Site;
- (iv) Obtaining samples;

(v) Assessing the need for, planning, or implementing additional response actions at or near the Site;

(vi) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Owner Settling Defendants or their agents, consistent with Section XIII (Access to Information);

(vii) Assessing Owner Settling Defendants' compliance with this Consent Decree; and

(viii) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree.

b. Commencing on the date of lodging of this Consent Decree, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the removal or remedial measures to be performed at the Site; and

c. If EPA so requests, execute and record in the Recorder's Office Franklin County, Indiana, an easement, running with the land, that (i) grants a right of access for the purpose of conducting response activities at the Site, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 24(b) of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the removal or remedial measures to be performed at the Site. Owner Settling Defendants shall grant the access rights and the rights to enforce the land/water use restrictions to (i) the United States, on behalf of EPA, and its representatives, (ii) the State of Indiana and its representatives, (iii) and/or other appropriate grantees. Owner Settling Defendants shall, within 45 days of such request from EPA, submit to EPA for review and approval with respect to such property:

(i) a draft easement, that is enforceable under the laws of the State of Indiana, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

(ii) current title commitment or report prepared in accordance with the U.S. Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (1970) (the "Standards").

Within 15 days of EPA's approval and acceptance of the easement, Owner Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, record the easement with the Recorder's Office of Franklin County, Indiana. Within 30 days of recording the easement, Owner Settling Defendants shall provide EPA with final title evidence acceptable under the Standards, and a certified copy of

the original recorded easement showing the clerk's recording stamps.

25. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement response activities at the Site, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Owner Settling Defendants shall cooperate with EPA's and Indiana's efforts to secure such governmental controls.

26. Notwithstanding any provision of this Consent Decree, the United States and the State of Indiana retain all of their access authorities and rights, as well as all of its their rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XIII. ACCESS TO INFORMATION

27. Settling Defendants shall provide to EPA, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within their possession or control or that of their contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

28. Confidential Business Information and Privileged Documents.

a. Settling Defendants may assert business confidentiality claims covering part or all of the records submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified Settling Defendants that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such records without further notice to Settling Defendants.

b. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege in lieu of providing records, they shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name and title of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States shall be withheld on the grounds that they are privileged.

29. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other records evidencing conditions at or around the Site.

XIV. RETENTION OF RECORDS

30. Until 10 years after the entry of this Consent Decree, Settling Defendants shall preserve and retain all records now in their possession or control, or which come into their possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

31. Upon request by EPA or DOJ, Settling Defendants shall deliver any such records to EPA. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name and title of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States shall be withheld on the grounds that they are privileged.

32. Each Owner Settling Defendant hereby certifies that, to the best of his or her knowledge and belief, after thorough inquiry, he or she has:

not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or other information relating to his or her potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against him or her regarding the Site, and that he or she has fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

33. Each Settling ATP Defendant hereby certifies that, to the best of his, her, or its knowledge and belief, after thorough inquiry, he, she or it has:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or other information relating to his, her, or its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against him, her, or it regarding the Site, and that he, she, or it has fully complied with any and all EPA requests for information regarding the Site and Settling ATP Defendants' financial circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927; and

b. submitted to EPA Financial Information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time Settling ATP Defendants execute this Consent Decree.

XV. NOTICES AND SUBMISSIONS

34. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendants, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-3-08896)
P.O. Box 7611
Washington, D.C. 20044-7611

As to EPA:

Nola Hicks
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency- Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3507

Steven Renninger
U.S. EPA Region 5, Emergency Response Branch
26 West Martin Luther King Dr.,
Cincinnati, OH 45268

As to Settling Defendants:

As to Daniel and Naomi Rapier:

Rapier Electric
4845 Augspurgen
Hamilton, Ohio 45011

As to Franklin County:

Sean Griggs
BARNES & THORNBURG LLP
11 South Meridian Street
Indianapolis, IN 46204

As to Gale and Juanita Hornsby:

Donald M. Snemis
ICE MILLER LLP
One American Square
Suite 3100
Indianapolis, IN 46282

XVI. RETENTION OF JURISDICTION

35. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVII. INTEGRATION/APPENDICES

36. This Consent Decree and its appendices constitute the final, complete and exclusive Consent Decree and understanding between the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the map of the Site;

“Appendix B.1” is a list of the financial documents submitted to EPA by Franklin County;

“Appendix B.2” is a list of the financial documents submitted to EPA by Gale and Juanita Hornsby.

37. Franklin County and the Hornsbys have entered into a separate Settlement and Release Agreement as to the Hornsby's Cross-Claim against Franklin County, the lease of the Property from approximately 1966 to 1971 for use as a county dump, and any and all other asserted or unasserted claims which may arise therefrom (the "Franklin County/Hornsby Agreement"). Franklin County and the Hornsbys agree and stipulate that the Franklin County/Hornsby Agreement controls the resolution of all such claims, actions or causes of action between them.

XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

38. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

39. If for any reason this Court should decline to approve this Consent Decree in the form presented, this Consent Decree is voidable at the sole discretion of any Party and the terms of the

Consent Decree may not be used as evidence in any litigation between the Parties.

XIX. SIGNATORIES/SERVICE

40. Each undersigned representative of Settling Defendants to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

41. Settling Defendants hereby agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

42. Settling Defendants shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

XX. FINAL JUDGMENT

43. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between the United States and Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58. To the extent necessary, the United States shall hereby be deemed to have asserted a claim against Gale Hornsby and Juanita Hornsby, under CERCLA Section 107, 42 U.S.C. § 9607, arising out of the transaction or occurrence that is the subject of the complaints in the above-captioned consolidated cases pursuant to Fed. R. Civ. P. 14(a) and Fed. R. Civ. P. 15.

SO ORDERED THIS ____ DAY OF _____, 2008.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Daniel Rapier et al.*, 1:06cv1686 (S.D. Ind.), relating to the Laurel Stone Church Road Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: 3/27/08

RONALD J. TENPAS
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date: 3/31/08

LAURA A. THOMS
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Ben Franklin Station, P.O. Box 7611
Washington D.C. 20044-7611
Tel: (202) 305-0260

Date: _____

RICHARD C. KARL
Director, Superfund Division
U.S. Environmental Protection Agency-Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3507

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Daniel Rapier et al.*, 1:06cv1686 (S.D. Ind.), relating to the Laurel Stone Church Road Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: _____

RONALD J. TENPAS
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date: _____

LAURA A. THOMS
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Ben Franklin Station, P.O. Box 7611
Washington D.C. 20044-7611
Tel: (202) 305-0260

Date: 4/21/2008

RICHARD C. KARL
Director, Superfund Division
U.S. Environmental Protection Agency-Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3507

Date: 4/17/2008

ROBERT A. KAPLAN
Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency- Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3507

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Daniel Rapier et al.*, 1:06cv1686 (S.D. Ind.), relating to the Laurel Stone Church Road Superfund Site.

FOR DEFENDANT FRANKLIN COUNTY, INDIANA

Date: 3-28-08

Thomas E. Wilson
President of the Franklin County Board of Commissioners

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: E. Sean Griggs, Esquire

Title: Environmental Counsel

Address: Barnes & Thornburg LLP
11 South Meridian Street
Indianapolis, Indiana 46204

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Daniel Rapier et al.*, 1:06cv1686 (S.D. Ind.), relating to the Laurel Stone Church Road Superfund Site.

FOR DEFENDANTS GALE HORNSBY AND JUANITA HORNSBY

Date: 3-31-08

Gale Hornsby

Date: 3-31-08

Juanita Hornsby

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Donald M. Snemis
ICE MILLER LLP
Title: _____
One American Square
Address: Suite 3100
Indianapolis, IN 46282
(added with permission by LAT)

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Daniel Rapier et al.*, 1:06cv1686 (S.D. Ind.), relating to the Laurel Stone Church Road Superfund Site.

FOR DEFENDANTS DANIEL RAPIER AND NAOMI RAPIER

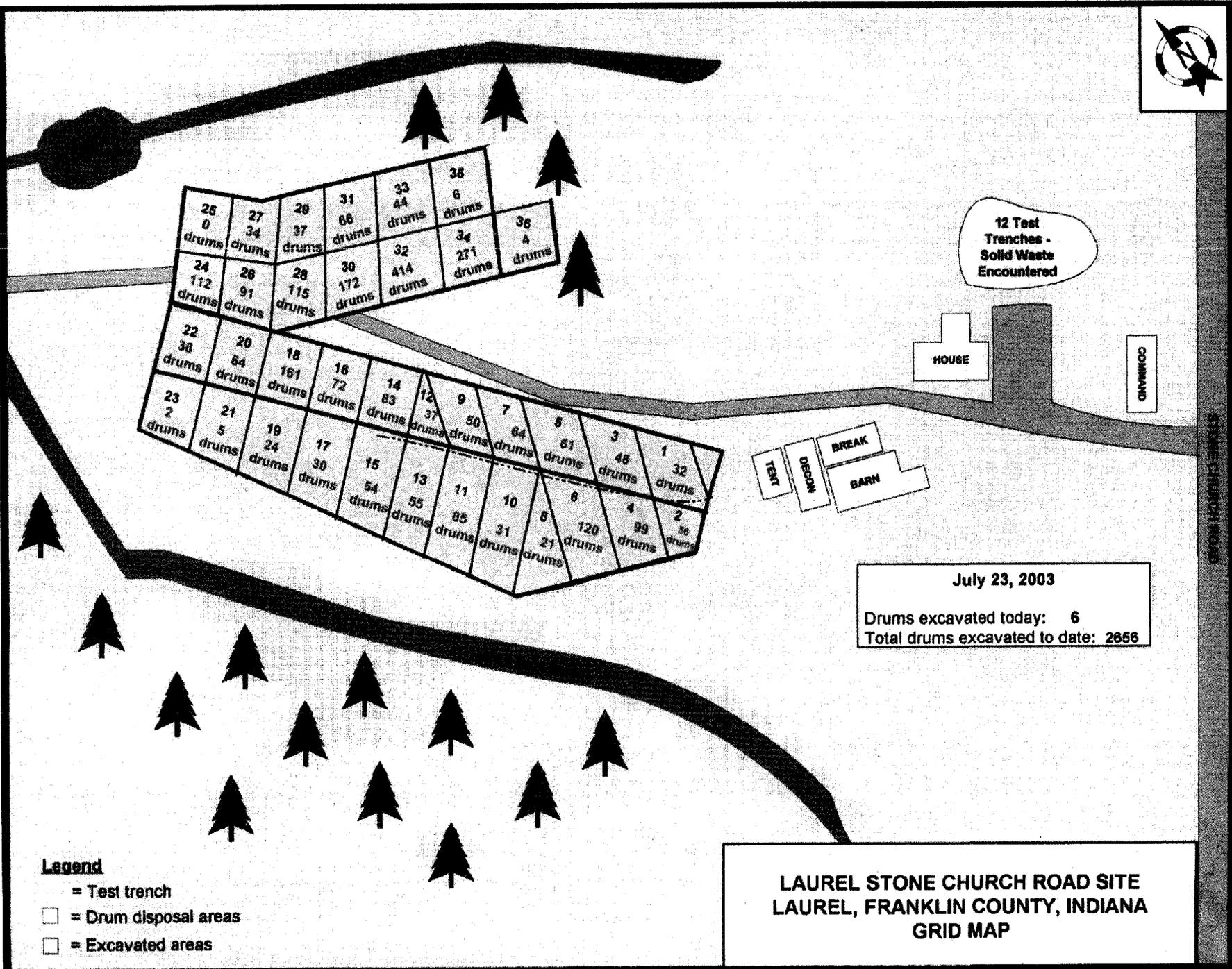
Date: 4-24-08 
Daniel Rapier

Date: 4-24-08 
Naomi Rapier

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Scott R. Alexander
Taft Stettinius & Hollister LLP
Title: _____
Address: One Indiana Square, Suite 3500
Indianapolis IN 46204
(added with permission by LAT)

APPENDIX A



25 0 drums	27 34 drums	29 37 drums	31 66 drums	33 44 drums	38 6 drums						
24 112 drums	26 91 drums	28 115 drums	30 172 drums	32 414 drums	34 271 drums	36 4 drums					
22 36 drums	20 64 drums	18 161 drums	16 72 drums	14 83 drums	12 37 drums	9 50 drums	7 64 drums	5 61 drums	3 48 drums	1 32 drums	
23 2 drums	21 5 drums	19 24 drums	17 30 drums	15 54 drums	13 55 drums	11 85 drums	10 31 drums	8 21 drums	6 120 drums	4 99 drums	2 56 drums

12 Test
Trenches -
Solid Waste
Encountered

HOUSE

COMMAND

TENT
DECOR
BARN

July 23, 2003
Drums excavated today: 6
Total drums excavated to date: 2656

- Legend**
- = Test trench
 - = Drum disposal areas
 - = Excavated areas

**LAUREL STONE CHURCH ROAD SITE
LAUREL, FRANKLIN COUNTY, INDIANA
GRID MAP**

APPENDIX B.1

Appendix B.1: Financial Documents Submitted to EPA by Franklin County

1. 2004 Audit Report of Franklin County Auditor, dated December 30, 2005
2. 2005 Examination Report of Franklin County Auditor, dated November 30, 2006
3. 2005 Examination Report of Franklin County, Indiana, dated November 30, 2006
4. 2005 Annual Financial Report for Franklin County, Indiana
5. 2006 Budget for Franklin County, Indiana
6. 2006 Annual Financial Report for Franklin County, Indiana – Cash Balance Report
7. 2006 Annual Financial Report for Franklin County, Indiana – Revenue Statement
8. 2006 Annual Financial Report for Franklin County, Indiana – Expenditures Statement
9. 2007 Budget for Franklin County, Indiana
10. Certificate of Net Assessed Valuations to the Department of Local Government Finance for Franklin County, Indiana, dated March 30, 2005
11. January 4, 2006 letter to Franklin County Commissioners from Rebecca Oglesby, Franklin County Treasurer re Investments and Bank Accounts for 2007
12. Certificate of Net Assessed Valuations to the Department of Local Government Finance for Franklin County, Indiana, dated January 23, 2006
13. Estimate of Miscellaneous Revenues General Fund from Sources Other Than General Property Taxes for Use in Preparation of Estimate of Funds to be Raised, Year 2007 (“2007 Budget Estimate”), dated May 17, 2007
14. July 13, 2007 Letter from Robert H. Fuhrman to E. Sean Griggs, Esq. re Franklin County, Indiana’s Ability to Pay Superfund Cleanup Costs, with attachments
15. Franklin County 2007 Projected Costs (additional appropriations) in Excess of Adopted Budgets, Revised September 26, 2007

APPENDIX B.2

Appendix B.2: Financial Documents Submitted to EPA by Gale and Juanita Hornsby

1. Financial Statement of Debtor, signed by Gale Hornsby on August 30, 2006
2. 2003-2005 Federal Joint Income Tax Returns for Gale and Juanita Hornsby
3. 2003-2005 Indiana Joint Income Tax Returns for Gale and Juanita Hornsby